



The Commonwealth of Massachusetts

**DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY**

March 16, 2004

NSTAR Electric

)
)
)
)
)
)
D.T.E. 03-121

HEARING OFFICER RULING ON
MOTION OF THE ENERGY CONSORTIUM TO EXTEND TIME
FOR FILING PRE-FILED TESTIMONY

I. INTRODUCTION

On October 31, 2003, pursuant to G.L. c. 164, § 94 and 220 C.M.R. §§ 5.00 et seq., Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company ("Companies" or "NSTAR Electric") filed for approval by the Department of Telecommunications and Energy ("Department"), tariffs designed to establish standby rates for large and medium-sized commercial and industrial customers who have their own on-site, self-generation facilities. On November 26, 2003, the Department suspended the operation of the tariffs until June 1, 2004. On January 16, 2004, the Companies refiled the tariffs in this docket, thereby extending the period by which the Department could suspend the operation of the rates. On January 29, 2004, the Department suspended the operation of the tariffs until August 1, 2004, in order to investigate the propriety of the Companies' proposed tariffs.

On January 20, 2004, the Department issued the notice for this proceeding, which identified the following scope for this investigation:

In this proceeding, the Department will investigate the proposed tariffs in order to ensure that the Companies used an appropriate method for the calculation of standby or back up-rates for customers who have their own on-site, self-generation facilities. In particular, the Department will investigate, among other things, whether: (1) the proposed standby rates ensure that customers with

their own on-site, self-generation facilities pay an appropriate share of distribution system costs; (2) distribution companies should recover their costs through fixed or variable charges; (3) standby rates should reflect embedded and/or incremental costs; and (4) distribution companies should offer firm and non-firm standby service.

On February 10, 2004, the Department conducted a public hearing and procedural conference. The Attorney General of the Commonwealth (“Attorney General”) intervened pursuant to G.L. c. 12, § 11E. The Department granted full intervenor status to the following entities: Associated Industries of Massachusetts; the Boston Public Schools; Co-Energy America, Inc.; the Conservation Law Foundation, Inc.; the Division of Energy Resources; FuelCell Energy, Inc.; Fitchburg Gas and Electric Light Company; Low Income Weatherization and Fuel Assistance Network and Mass Community Action Program Directors Association; Massachusetts Electric Company; National Association of Energy Service Companies, Inc.; the NE DG Coalition¹; the Solar Energy Business Association of New England; Siemens Building Technologies, District One; The Energy Consortium; UTC Power, LLC; Western Massachusetts Electric Company; the Western Massachusetts Industrial Customer Group. The Department also granted limited participant status to the following entities: Allied Utility Network, LLC; the E-Cubed Company, L.L.C.; Dgsolutions LLC; Energy Concepts Engineering, PC; Keyspan Energy Delivery New England; Pace Law School Energy Project; Plug Power, Inc.; Predicate, LLC; Wyeth Pharmaceutical, Inc; and Constellation NewEnergy, Inc.²

At the procedural conference, the Hearing Officer established a procedural schedule that provided for, among other things:

Discovery on the Companies Filing
Intervenors File Direct Cases

Close March 5, 2004
March 16, 2004

¹ The NE DG Coalition consists of the following companies: American DG, Inc.; Aegis Energy Services, Inc.; OfficePower L.L.C.; Equity Office Properties Trust, Inc.; Northern Power Systems, Inc.; RealEnergy, Inc.; Tecogen Inc.; and Turbosteam Corporation.

² The following entities refer to themselves as the Joint Supporters: Allied Utility Network, LLC; the Boston Public Schools; Co-Energy America, Inc.; The E-Cubed Company, LLC; Dgsolutions, LLC; Energy Concepts Engineering, PC; National Association of Energy Service Companies, Inc.; Pace Law School Energy Project; Predicate LLC; and Siemens Building Technologies, District One.

On March 15, 2004, The Energy Consortium (“TEC”) filed with the Department a Motion to Extend Time for Filing Pre-Filed Testimony (the “Motion”). Also on March 15th, NSTAR Electric filed its opposition to the Motion (“NSTAR Electric Response”).

II. THE MOTION

By its Motion, TEC requests that the date for filing its direct case be extended from March 16, 2004 to March 26, 2004 (Motion at 1). In the alternative, TEC requests that this date be extended to no later than seven days following TEC’s receipt of complete responses from NSTAR Electric to TEC’s information requests (id.).

In support of its Motion, TEC states that it issued information requests to NSTAR Electric on February 27, 2004 and March 5, 2004, and, that as of the date of the Motion, NSTAR Electric has not provided responses (Id. at 1-2). TEC asserts that TEC’s receipt and review of the requested information is necessary for it to submit clear and informed testimony (id. at 2).

III. RESPONSE TO THE MOTION

NSTAR Electric argues that the procedural schedule was established for this case in the context of a specific statutory framework that requires all parties to proceed in an orderly basis toward evidentiary hearings, briefing, and, ultimately, a Department Order by July 30, 2004 (NSTAR Electric Response at 1). NSTAR Electric states that it did not receive TEC’s information requests until March 1, 2004 and March 8, 2004, respectively (id. at 1-2). NSTAR Electric maintains that its responses are due March 15th and March 22nd (id. at 2). NSTAR Electric states that it has filed on March 15th its responses to TEC’s February 27th information requests (id.). NSTAR Electric contends that TEC sent its discovery to NSTAR via regular mail and not electronically, in violation of a Hearing Officer directive (id.). Accordingly, NSTAR Electric requests that the Department deny the Motion (id.).

IV. ANALYSIS AND RULING

I do not find that there is sufficient cause to modify the procedural schedule as requested by TEC. Further, I find that the interests of TEC do not require a modification to the procedural schedule to provide additional time for TEC to file its direct case. The existing procedural was developed at the February 10th procedural with the involvement of all parties. In fact, a representative from TEC was present at the procedural conference. Tr. A at 78. No party appealed the procedural schedule established by the Hearing Officer to the Commission.

Although TEC indicates that its two sets of information requests were filed with the Department on February 27th and March 5th, those were mailed to NSTAR Electric, not hand delivered or sent electronically. Those two sets of information requests were received by NSTAR Electric on March 1, 2004 and March 8, 2004. Receipt by NSTAR Electric starts the fourteen-day period for its response to information requests (Ground Rule1). Thus, responses are due by NSTAR Electric by March 15, 2004 and March 22, 2004. On March 15, 2004, NSTAR Electric filed its responses to TEC's first set of information requests. On February 20, 2004, the Hearing Officer sent a notice via e-mail to representatives of the parties that all material must be exchanged electronically, in addition to required paper copies. In establishing the requirement for the electronic exchange of material, the Hearing Officer stated:

The requirement for exchanging material among the parties in electronic format is especially necessary for the orderly conduct of this proceeding considering the number of the parties and the deadlines contained in the Procedural Schedule.

TEC had control over the timing of issuance of its information requests to allow sufficient time for the receipt of responses necessary for the preparation of its direct case. If TEC had provided its information requests electronically to NSTAR Electric, it may have received responses earlier than March 15, 2004. TEC's failure to manage the issuance of its discovery cannot be rewarded with more time in the procedural schedule.

In establishing a procedural schedule for the orderly conduct of an investigation within the six-month time period mandated by the Legislature, the Department balances the rights of the parties, the need to develop a full and complete record, and the requirements for the Department to deliberate the issues and to issue its decision. The existing procedural schedule provides for the proper balance of these interests and requirements.

Accordingly, the Motion of The Energy Consortium to Extend Time for Filing Pre-Filed Testimony is DENIED.

Pursuant to 220 C.M.R. § 1.06(6)(d)3, any party may appeal this Ruling to the Commission by the filing of a written appeal no later than March 18, 2004, with any response to an appeal due no later than March 22, 2004.

John Cope-Flanagan
Hearing Officer

cc: Commission
Mary Cottrell, Secretary
Andrew Kaplan, General Counsel